IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

...

Criminal Revision No.134 of 1994

Nagar Singh **...** Petitioner

VERSUS

The State of Punjab **...** Respondent

AND

Criminal Revision No.136 of 1994

Ram Singh **...**Petitioner

VERSUS

The State of Punjab **...** Respondent

Decided on : October 10, 2007

CORAM : HON'BLE MR.JUSTICE A.N.JINDAL

Present: Mr.Ashish Gupta, Advocate for the petitioners.

Mr.Satish Kumar Bhanot, Senior Deputy Advocate General for the respondent – State.

A.N.JINDAL, J.-

This judgment will dispose of two connected revision petitions i.e. CRR Nos.134 and 136 of 1994 filed by Nagar Singh and Ram Singh, respectively (hereinafter referred to as the petitioners) challenging the judgment dated 4.2.1994 passed by Additional Sessions Judge, Patiala, dismissing the appeals of the petitioners against the judgment dated 25.3.1992 passed by Sub Divisional Judicial Magistrate, Rajpura, convicting the petitioners

under Sections 408, 467 and 477-A of the Indian Penal Code (for short IPC) and sentencing each of them to undergo rigorous imprisonment for two years and pay fine of Rs.5000/-, in default of payment of fine, to undergo further rigorous imprisonment for one year, under Section 408 IPC and to undergo rigorous imprisonment for one year, each, for offences under Sections 467 and 477-A IPC. However, all the sentences were ordered to run concurrently.

The factual matrix of the case is that from the year 1971 to 1973, Ram Singh – petitioner remained as the President of the Nalas Khurd Cooperative Agriculture Service Society (hereinafter referred to as the Society), whereas, the other petitioner, namely Nagar Singh was the Secretary of the said Society during that period.

Vide letter No.6655 dated 24.6.1975, the Assistant Registrar, Cooperative Societies, Rajpura requested to Senior Superintendent of Police, Patiala for registering a case against Ram Singh – petitioner for having committed misappropriation of Rs.35,545.50 paise. According to the allegations contained in the letter, petitioner Ram Singh had forged 11 `tamasaqs' (promissory notes) involving Rs.35,545.50 paise and made an entry in this regard at page No.70 of the ledger, but he did not produce the said

`tamasaqs' (promissory notes); the matter was investigated; during investigation, following circumstances came to the surface:-

1) Between 17.8.1972 to 1.7.1973, both the petitioners showed sale of fertilizer for a sum of Rs.35,545.50 paise on loan against 11 persons in the cash book which were actually not purchased by the loanees;

2) On 10.9.1971, the petitioners forged `D' form and lifted fertilizer of the value of Rs.17,340/- and mis-appropriated the same;

3) On 14.12.1971 and 30.12.1971 the petitioners forged the `D' forms and withdrew Rs.25,700/-, Rs.45,200/- i.e. a total of Rs.70,900/- from Central Co-operative Bank, Rajpura Branch and misappropriated the amount, and;

4) On 1.9.1971, 16.11.1971 and 30.12.1971, both the petitioners forged `D' forms for the value of Rs.17,340/-, Rs.25,700/- and Rs.45,200/- in the names of 13, 22 and 35 members, respectively and withdrew the amount from the bank.

Consequently, the challan was presented against the petitioners and they were accordingly charged under Sections 408, 467 and 477-A IPC, to which they denied as incorrect and claimed trial.

In order to substantiate the charge, the prosecution examined Dharampal, Inspector (PW1), Manjit Singh, Branch Manager (PW2), Amar Singh (PW3), Mohinder Singh (PW4), Nikka Singh (PW5), Prem Singh (PW6), Randhir Singh (PW7), Sukhdev Singh (PW8), Santokh Singh (PW9), Rajinder Singh (PW10), Sucha Singh (PW11), Harbans Singh (PW12), Harjit Singh (PW13), Piara Singh (PW14), Gurbax Singh (PW15), Jaswant Singh (PW16), Jagdip Singh (PW17), Balbir Singh (PW18), Brij Kishore (PW19), Narinder Singh (PW20), Amar Singh (PW21), Gursewak Singh (PW22), Kheru Ram (PW23) and Hari Chand (PW24).

When examined under Section 313 of the Code of Criminal Procedure, the petitioners denied all the allegations and pleaded their false implication. In defence, they examined Sucha Singh as DW1.

Ultimately, the trial ended in conviction and the appeals were also dismissed. Hence, the present revision petitions.

Arguments heard. Record perused.

There is no denying a fact that Ram Singh was the President and Nagar Singh was the Secretary of the Society during the relevant period. From the unchallenged testimonies of Dharampal,

Inspector (PW1), Manjit Singh, Branch Manager, Patiala Central Cooperative Bank (PW2), Santokh Singh (PW9), Piara Singh (PW14) and Brij Kishore (PW19), the factum regarding their status also stands proved and it is further established that both the petitioners prepared false and forged `D' forms in the name of different persons and withdrew the amount from the Bank. They did not take the requisite ``tamasaqs' (promissory notes) from the members of the Society to whom, they had allegedly disbursed the said amount. Thus, the inference would be drawn that they forged the `tamasaqs'. It is also amply established from the entry made at page No.70 of the Cash Book Ex.PA, showing the sale of fertilizer worth Rs.35,545.50 paise against 11 members, namely Ajit Singh, etc, but those members while appearing in the witness box, namely; Amar Singh (PW3), Mohinder Singh (PW4), Nikka Singh (PW5), Prem Singh (PW6), RandhirSingh (PW7), Sukhdev Singh (PW8), Rajinder Singh (PW10), Sucha Singh (PW11), Gurbax Singh (PW15), Jaswant Singh (PW16) and Gursewak Singh (PW22) have contradicted the documents and testified that they never received any amount of loan from the Society and did never sign any document, which purportedly bear their signatures. It is also established from the testimony of Piara Singh (PW14) that he conducted the audit enquiry regarding the funds of the Society and found the entries regarding the fertilizer in the name of certain

members in the cash book Ex.PA, but the petitioners did not produce `tamasaqs' before him.

The bald plea of the petitioners that entrustment is not proved does not hold water in the light of the testimony of the aforesaid witnesses. `D' forms Ex.PL, PR, PO, PW19/A and Ex.PW19/C coupled with the documents Ex.PR/2, PW/3, PR/4, PW21/A, PW21/B, PO/1, PO/2 and Ex.PO/3 establish that the petitioners prepared and signed `D' forms and other documents in the names of different persons, fictitiously and after withdrawing the amount on the basis of the aforesaid documents, misappropriated the same. It is also established that entries were made in the cash book, but the amount was not disbursed to the right persons. `Tamasaqs' were not produced by petitioner Ram Singh during the audit, which also adds to the circumstances, attributing complicity of the petitioners in the commission of the crime.

While giving up the plea of limitation, it has been next contended by the counsel for the petitioners that since an award for a sum of Rs.54,456.60 paise was passed in respect of the amount misappropriated by them, they could not be criminally prosecuted. In this regard, it may be observed that criminal and civil proceedings are two remedies, provided under two different statutes and both the

said proceedings in turn are valid and can be taken against an accused simultaneously. Recovery proceedings may have been initiated under the Co-operative Societies Act, but the penal provisions as provided under the Indian Penal Code could also be initiated for the criminal act done by the petitioners intentionally and fraudulently with a view to cause loss to the state exchequer and to benefit themselves. It has also been observed by this court in case **Kawal Dass vs. State of Haryana**, *1991(2) Chandigarh Criminal Cases 248* that the scope and purpose of civil and criminal proceedings are different and two are not incompatible with each other and can go simultaneously and as such in view of this, the criminal prosecution of the petitioners in the light of the award passed against them, could not be said to be barred.

No other point has been urged.

As a sequel of the above discussion, the revision petitions are hereby dismissed.

(A.N.JINDAL)
JUDGE

The 10th day of October, 2007
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To be Referred to Reporter - **Yes**